

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
 :
INTERNATIONAL ASSOCIATION OF :
FIREFIGHTERS LOCAL 400 :
 :
and : Case 100
 : No. 43409
 : MA-5969
CITY OF FOND DU LAC :
(FIRE DEPARTMENT) :
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Appearances:

Mr. Charles Buss, President, Local 400, IAFF, appearing on behalf of the
Mr. Bruce K. Patterson, Consultant, appearing on behalf of the Employer.

Union.

ARBITRATION AWARD

The Employer and the Union above are parties to a 1987-1989 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the retirement payout grievance of David Bubnitz.

The undersigned was appointed and held a hearing on March 27, 1990 in Fond du Lac, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on April 30, 1990.

STIPULATED ISSUES

1. Did the City violate the collective bargaining agreement by refusing to pay David Bubnitz his Good Attendance Bonus payout upon his termination?
2. If so, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE XIV

GOOD ATTENDANCE BONUS PROGRAM

Section 1 - Effective January 1, 1987, employees who accumulate sixty (60) days of unused sick leave shall be eligible to participate in the Good Attendance Bonus Program. Under the program, those employees who use no sick leave during the month and whose unused sick leave accumulation totals sixty (60) days at the end of each month will be entitled to 1.25 retirement insurance credits at the end of each month. The City shall maintain a record of all retirement insurance credits accumulated by each employee.

Section 2 - During 1988 and upon retirement the accumulated retirement insurance credits of each employee shall be converted into cash at the rate of \$36.40 per credit and during 1989 at the rate of \$38.00 per credit. This rate shall be reviewed during future contract negotiations.

Section 3 - Upon retirement, the cash equivalent of all accumulated retirement credits shall be payable in the form of a lump sum payment, or placed in an escrow account from which the retiree's group health insurance premiums will be paid in monthly installments until the account is exhausted. Each retiree shall have the option to select the form of payment he prefers.

Section 4 - As of January 1, 1979, those employees having an accumulation of unused sick leave in excess of sixty (60), but no more than sixty-six (66), days shall be entitled to retain those accumulated sick days in excess of sixty (60) but shall not be allowed to accumulate additional days until their accumulation falls below sixty (60) days.

DISCUSSION

The facts in this matter are undisputed. David Bubnitz, who was employed by the City's Fire Department for 15 years, resigned to take up a new post as Chief of the City of Franklin's Fire Department. Bubnitz requested that he

receive the amount accrued in his name under the Good Attendance Bonus program established by Article XIV of the Agreement, and the City refused to pay him. Bublitz filed a grievance contending that he had met all of the conditions of Article XIV, and the City denied the grievance on the ground that Bublitz had not "retired" within the meaning of that clause. No prior employee in this bargaining unit has attempted to claim a Good Attendance Bonus payout under similar circumstances.

Local 400 President Buss testified that the intent of the Good Attendance Bonus was so that people who had accumulated 60 days of sick leave would have an incentive not to abuse sick leave. The Bonus was first negotiated in 1980, and has been modified in some unrelated respects since then, but Buss testified that no one during these negotiations ever discussed what would happen if an employee resigned and went to another department.

Firefighter Richard Berndt testified that there has been a history in the Department of employees serving until retirement, and that until the present case arose no employee had left before retirement. The City's negotiator, Bruce Patterson, testified that the proposal was generated by the City and that the City's intent was that retirement, in the sense of withdrawal from any employment covered by the Wisconsin Retirement System, would be the sole qualifying condition for the Bonus payout. Patterson testified that the City's contracts with two other unions also refer to "retirement", and that the employees in those departments who have quit have not been paid a Good Attendance Bonus. Patterson admitted, however, that he was not certain that any employees who had quit in the other departments had accrued money under the Good Attendance Bonus Program. There is no dispute that the City has regarded permanent disability as qualifying retirement for purposes of this clause.

The Union contends that under at least one of the definitions of retirement cited by the City, namely "removal or withdrawal from service, office or business", the grievant has met the qualification by removing himself from service with the City of Fond du Lac Fire Department. The Union contends that there are two possible interpretations of the word "retirement" in this Article, and that under that definition the grievant "retired" on the day he ceased to work for the Department. This, the Union contends, would make Bublitz eligible for an immediate payout of some \$1600.00 he had accrued under the program. The Union notes that if the grievant is found not to have retired yet within the meaning of the clause, he will presumably do so at some date. The Union therefore argues in the alternative that if Bublitz is found not to have retired from the Fond du Lac Fire Department, the grievant should be eligible for the Good Attendance Bonus payout upon his retirement from the Franklin Department, (or presumably whatever department he is last employed by.) The Union contends in that instance that the monies should be banked by the City until then.

The City contends that the language of Article XIV was clearly structured in contemplation of an employee retiring in the sense of ceasing all active employment. The City contrasts the definition of "retirement" in the Random House Dictionary with that Dictionary's definition of "quit", and argues that the definitions given for "quit" better fit the grievant's circumstances than "retired". The City argues that it was never the City's intent that retirement be defined as anything broader than retirement in accordance with the rules of the Wisconsin Retirement System and directly from employment with the City of Fond du Lac, and notes that the grievant terminated his employment for professional advancement and is still employed in the fire service. The City contends that the grievant will not become eligible in the future for this benefit any more than at present.

With respect to the first of the Union's contentions, I find that it strains the generally understood meanings of the word "retirement" to apply that term to an employee who continues to work at the same type of profession, without drawing a pension, and simply for a different employer in a higher-level capacity. Nothing in the common use of the term "retirement" would lead an ordinary and reasonable reader of Article XIV to anticipate the construction that the Union now puts on it, there is evidence that neither party anticipated such an interpretation at the time of its negotiation, and I find that "quit" more accurately describes the grievant's situation.

The Union's second contention is closer to the literal language of Article XIV, but I still find it unconvincing. While the City has not established in this record that there is any past practice relevant to this matter in other departments, it would be extraordinarily uncommon for a municipal employer to negotiate a benefit on behalf of employees who have long since quit from that city's employ, and even more so where the benefit now demanded was concededly not described as such by the Union at the time of the negotiations. Furthermore, the purpose of encouraging employees not to abuse sick leave is served whether or not employees who voluntarily quit will ultimately receive a payout, particularly in circumstances where no employee prior to the grievant had in fact resigned before retirement. Finally, the fact that Article XIV allows employees receiving a Good Attendance Bonus payout to convert that into continued health insurance payment serves, as the City argues, to support the interpretation that only employees already receiving health insurance from the City would be eligible. Clearly, an employee who has

quit employment with the City does not fall within the apparent meaning of that clause. For all of these reasons, I conclude that Article XIV is restricted as a benefit to those employees who retire from the City's Fire Department without any intervening quit.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the City did not violate the collective bargaining agreement by refusing to pay David Bubnitz a Good Attendance Bonus payout upon his termination.

2. That the grievance is denied.

Dated at Madison, Wisconsin this 28th day of June, 1990.

By _____
Christopher Honeyman, Arbitrator